

Election/Restrictions

Applicant's election without traverse of group I, claims 1-8 in the reply filed on 9/24/09 is acknowledged.

The Office regrets that a typographical error was made by characterizing group I as claims 1-8 when claim 1-7 were intended. Group I was characterized in the 8/24/09 restriction requirements as "an oxygen absorbent composition" which correctly characterizes claims 1-7. However, claim 8 is directed to a "method of manufacturing ..." which is clearly different from the "composition" claims and should have been placed in group II with the other "method of manufacturing" claims 9-10. The Office regrets this typographical error and any inconvenience caused to Applicants'. The proper grouping of the claims is reproduced here:

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.
Group I, claim(s) 1-7, drawn to an oxygen absorbent composition.

Group II, claim(s) 8-10, drawn to a method of manufacturing an oxygen absorbent composition.

Group III, claim(s) 11-14, drawn to an oxygen absorbent compound and a dehydrating agent.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Group II lacks the corresponding special technical features of groups I and III because group II is directed to a method of manufacturing and not a composition as groups I and III. Group I lacks the corresponding special technical feature found in group III because a dehydrating agent is not required.

During a telephone conversation with Mr. Cole on 1/7/09, he confirmed that in light of the previous improper grouping of claim 8 applicants still intended to pursue the invention encompassing claim 1-7.

Claims 8-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/24/09.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are directed to "oxidizing agents" which do not further limit claim 1 because no "oxidizing agent" is claimed. Clarification could be achieved by including an oxidizing agent in claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

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by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-7 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Suzuki et al. (US 2005/0153198).

Suzuki et al. teach in paragraph[006] that Japanese Examined Patent Publication Nos. H2-030141 and H2-030142 teach a catalyst is proposed that consists of a fluororesin porous molded article and a conductive powder on which iron phthalocyanine, cobalt porphyrin, or other metal chelate compound possessing the ability to reduce oxygen gas is supported. Paragraph[0136] teaches the metal or oxide used in the range of 1 to 50 wt%.

The claimed "oxygen absorbent molding ... wherein the binder is a fibrous resin" has been read on the taught **fluororesin porous molded article**, the claimed "oxygen absorbent material" has been read on the taught **powdered iron** and the claimed "oxygen absorbing molding" has been read on the taught **dimer**.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ishii et al. (US 2003/0194562).

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Ishii et al. teach in paragraph [0008] that fluororesin thermoplastic resins are desirable for their excellent dielectric characteristics. Paragraph [0030] teach the used of allyl halides such as allyl bromide. Paragraph [0055] teach the resin composition may contain an extending agent, a filler (including organic and inorganic fillers), a reinforcing agent or a pigment as required. Examples of these include silica, calcium carbonate, antimony trioxide, kaoline, titanium dioxide, zinc oxide, mica, barite, carbon black, polyethylene powder, polypropylene powder, glass powder, aluminium powder, iron powder, copper powder, glass fiber, carbon fiber, alumina fiber, asbestos fiber, aramid fiber, glass woven fabric, glass unwoven fabric, aramid unwoven fabric and liquid crystal polyester unwoven fabric. These may be used alone or in combination. Paragraph [0063] teaches the concentration range of 15-95% by weight. Paragraph [0110] teaches the composition can also included polyhydric alcohols such as 2-hydroxyethyl (meth)acrylate, 2-hydroxypropyl (meth)acrylate, polypropylene glycol di(meth)acrylate, trimethylol propane di(meth)acrylate, trimethylol propane tri(meth)acrylate, pentaerythritol tetra(meth)acrylate and dipentaerythritol hexa(meth)acrylate.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 05-343635 (abstract provided in the 6/23/06 IDS) in view of JP 03012367 (abstract provided in the 6/23/06 IDS).

JP 05-343635 teaches to prevent oxygen degradation, it is desirable to make an oxygen absorbing layer(41) comprising a fluorine compound, metallic fine powder and final coating with metallic fluoride. JP 05-343635 is silent what type of metallic fine powder would work and the weight percentage of the metallic powder.

JP 03012367 teach an oxygen absorbent comprising a metal powder, such as iron, in a mixture of 1% or less. Iron is a desirable absorbent because it is inexpensive, readily available and non-toxic.

It would have been within the skill of the art to modify JP 05-343635 in view of JP 03012367 and use a well known metal powder oxygen absorbent, such as iron powder, to achieve the expected and well known results of oxygen absorption and to gain the above advantages.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has well known and expected results. The weight percentage of an oxygen absorbent, such as iron, would have been a result effective variable to achieve the well known and expected results of oxygen absorption.

It would have been within the skill of the art to further modify JP 05-343635 in view of JP 03012367 make the weight percentage of iron 1-50 % as optimization of a result effective variable to achieve the well known and expected results of oxygen sequestering.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 03012367 in view of Ishii et al.(US 2003/0194562).

JP 03012367 teach an oxygen absorbent comprising a metal powder, such as iron, molded in a suitable resin. JP 03012367 is silent to the use of a fluoro resin and the weight percentage of the metallic powder.

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Ishii et al. teach in paragraph [0008] that fluoro resin thermoplastic resins are desirable for their excellent dielectric characteristics.

It would have been within the skill of the art to modify JP 03012367 in view of Ishii et al. and use a fluoro resin to gain the above advantages.

The court decided In re Boesch (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has well known and expected results. The weight percentage of an oxygen absorbent, such as iron, would have been a result effective variable to achieve the well known and expected results of oxygen absorption.

It would have been within the skill of the art to further modify JP 03012367 in view of Ishii et al. and make the weight percentage of iron 1-50 % as optimization of a result effective variable to achieve the well known and expected results of oxygen sequestering.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYLE A. ALEXANDER whose telephone number is (571)272-1254. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/LYLE A ALEXANDER/
Primary Examiner, Art Unit 1797